

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 8, 9, 10, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by English translation of German Patent DE 20001566U to Lanz.

Regarding Claims 1, 8, and 14, Lanz teaches a self watering system and method for plant displays, wherein said system comprises a display support structure having downwardly extending legs (Lanz Fig. 4 #13); a top (Lanz Fig. 4 #1) on said display support structure; said top having side panels and a bottom having a water tight connection (Lanz English translation page 5 line7); a reservoir (Lanz Fig. 1 #5) with a plurality of perforations placed in said top between said side panels; said reservoir capable of supporting plants without submersing said plants in Water (Lanz Fig. 3 #11); and a capillary mat placed on top of said reservoir (Lanz #7 and 3/10; English translation page 5 line 20-21) partially submersed in the water in the reservoir in direct contact with the water in the reservoir so that the capillary mat directly wicks water contained in the reservoir without being substantially submersed in the water for wicking water uniformly from the reservoir (Lanz English Translation page 5 line 17); a self watering system for plant displays with a water supply (Lanz #14 and English translation page 6 last paragraph); said reservoir includes a plurality of perforations forming a

honeycomb material for containing water (Lanz Fig. 1 #5; circular top surface of Lanz #5 appears to be the same shape as applicant).

Regarding Claims 3 and 9, Lanz teaches said reservoir includes: a thickness sufficient to prevent said capillary mat from being substantially submersed in the water (Lanz #7, 3, 10; applicant has not claimed a specific thickness numerical dimension range and Lanz Fig. 1 and 3 shows that the capillary mat is not substantially submersed).

Regarding Claims 4 and 10, Lanz teaches wherein said capillary mat includes: a material for the plants to sit upon while wicking water from said reservoir to the root structure of the plants (Lanz #3, 10, 7).

Claims 5, 11, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over English translation of German Patent DE 20001566U in view of U.S. Patent No. 4,428,151 to Solomon.

Regarding Claims 5, 11 and 17, Lanz teaches said capillary mat includes: a material formed from a barrier fabric for the plants to sit upon while wicking water from said reservoir to the root structure of the plants (Lanz #2 and 3; English translation page 5 line13-14). Lanz is silent on the capillary mat is explicitly a woven barrier fabric. However, Solomon teaches a capillary mat of woven fabric (Solomon Col. 2 line 40-43). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Solomon at the time of the invention to make it more wear

resistant as taught by Solomon. The modification is merely the simple substitution of one known element for another to obtain predictable results.

Claims 6, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over English translation of German Patent DE 20001566U to Lanz in view of U.S. Patent No. 5,209,015 to Filippi.

Regarding Claim 6, 12 and 16, Lanz teaches wherein said water supply includes: at least one water supply pipe extending along one side of said top, but is silent on it having a series of spaced perforations for providing water evenly to said reservoir. However, Filippi teaches a water supply with a series of spaced perforation (Filippi Fig. 4 #19). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Filippi at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent irrigation means selected to prevent root rot and to promote healthy plant development and for a more comprehensive distribution of water to a larger area of plants. The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent DE 20001566U to Lanz in view of United Kingdom Patent GB 2018117 A to Marrison.

Regarding Claim 7 and 13, Lanz is silent on wherein said system includes: at least one stand pipe *for allowing said top to drain to prevent overfilling* (functional language structure must merely be capable of performing this function). However, Marrison teaches a stand pipe in a self watering plant display system (Marrison #12). It would have been obvious to one of ordinary skill in the art to modify the teachings of Lanz with the teachings of Marrison at the time of the invention for ergonomic ease of adding a specific concentration of nutrients and fertilizer to the system. The modification is merely the application of a known technique to a known device ready for improvement to yield predictable results.

#### ***Response to Arguments***

Applicant's arguments filed 15 September 2008 have been fully considered but they are not persuasive.

The examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art of record. It is the examiner's position that Lanz teaches and satisfies all the limitations of the independent claims. Lanz can be interpreted in two ways. First, capillary is defined as drawing another substance into it. The combination of Lanz elements #7, 2, 3/10 make-up the capillary mat. The examiner maintains that capillary action is taking place in elements #3/10 because the roots draw the water in from elements #3/10 which drew the water in from elements #2 and 7. How can this action not be capillary action? If capillary action wasn't taking place throughout elements 7, 3, 10 the device of Lanz would not work. Therefore, the first interpretation of Lanz is that elements #7, 2, 3/10 collectively are the capillary mat that is placed on

top of the reservoir and is partially submersed in the water in direct contact with the water without being substantially submersed in the water (Lanz element #7). Applicant has not defined substantially submersed. Greater than 90% can be interpreted as not even being substantially submersed. Lanz teaches that the reservoir is filled roughly 2/3 full and that element #7 extends about 2-3mm above the reservoir. Also, as the water in the reservoir goes down even more of the mat will be less submersed. In other words, the examiner interprets Lanz element #7 as being partially, but not substantially submersed in water. Lanz clearly teaches uniform water distribution (Lanz page 5 line 17).

The second way Lanz can be interpreted is that Lanz element #7 alone is the capillary mat. As discussed in the above paragraph Lanz element #7 is partially, but not substantially submersed in water. Applicant has not explicitly defined the top structure of the reservoir. Since element #7 extends 2-3mm above the reservoir (Lanz page 3 4<sup>th</sup> line from bottom) it can be considered on top of the reservoir and since element #7 rests on element #5 (Lanz Fig. 1) it is considered as being on top of the reservoir. Therefore, the second interpretation is that Lanz element #7 alone is the capillary mat and satisfies all the limitation of the independent claims.

The examiner maintains that Lanz Fig. 1 #5 teaches a honeycomb pattern. Since the surface shape is the same circular shape as depicted by applicant it is interpreted as satisfying the limitation. Applicant argues that the reservoir of Lanz does not freely communicate between perforations; however, applicant has not claimed this limitation.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/  
Primary Examiner, Art Unit 3643

14 October 2008